



DEPARTMENT OF
ECOLOGY
State of Washington

Small Business Economic Impact Statement

Chapter 173-455 WAC

Air Quality Fee Rule

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Small Business Economic Impact Statement

Chapter 173-455 WAC Air Quality Fee Rule

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Executive Summary

In this rulemaking, Ecology is updating Chapter 173-455 WAC (Air Quality Fee Regulation). This rule action covers fees associated with periodic and annual sources.

Businesses that generate small and moderate amounts of air pollution must participate in the air quality source registration program. The registration program is necessary to ensure that sources of air pollution operate in a way that minimizes emissions to comply with the Clean Air Act and protect human health.

Businesses generally report emissions either:

- Yearly in the case of annual registration program sources.
- Once every three years for periodic registration program sources.
- Once every six years for exempt registration program sources.

The proposed changes to the fee schedule include:

- Increases to general registration program fees for periodic sources.
- Re-establishing air quality registration fees for gasoline dispensing facilities.
- Clarifying the process for calculating registration program fees.
- Provide a method for making future fee increases.
- Make housekeeping changes to facilitate clarity and compliance.

Probable benefits include:

- Decrease in public risk of benzene exposure.
- Avoided decreases in program services.
- Clarification and improved compliance.
- Avoided decrease in program services.

Probable quantified costs include:

- \$112,980 per year in total increased permit fees.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.¹

For periodic sources as well as gasoline dispensing facilities, the proposed fee increases result in roughly 250 times the impact on small businesses as opposed to large businesses on a per-employee basis. This means Ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rulemaking intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes text providing hardship and economic considerations for small businesses in altering their compliance costs.

¹ http://www.governor.wa.gov/news/Executive_Order_10-06.pdf

Based on the Washington State Office of Financial Management's Input-Output model of the state economy, Ecology calculated that the proposed rule may result in three to four jobs being lost in the economy permanently over the next 20 years.

Chapter 1 Background

Based on research and analysis required by the Regulatory Fairness Act – RCW 19.85.070 – Ecology has determined the proposed rule amendments (Chapter 173-455 WAC) likely have a disproportionate impact on small business. Therefore, Ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by Ecology.

It is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #12-02-011), which contains more in-depth discussion of the analyses.

A small business is defined as having 50 or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment—the way air quality fees would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the “baseline” in this document. It includes only existing regulation through laws and rules at federal, state, and local levels. It does not include elements such as guidance or unofficial standard practices in industry or business.

1.1 History

Air pollution control in Washington is based on federal, state and local laws and regulations. The federal Environmental Protection Agency (EPA), the Department of Ecology (Ecology), and local clean air agencies all regulate air quality. Ecology establishes rules, and implements and enforces air quality regulations in counties without a local clean air agency. Ecology also has statewide jurisdiction over primary aluminum plants, pulp mills, large commercial and industrial facilities subject to the federal Prevention of Significant Deterioration (PSD) Program, and emissions of specific toxic air pollutants that exceed specified levels.

If you are located in one of the following counties, you have a local clean air agency: Benton, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Whatcom, or Yakima. Local clean air agencies may implement and enforce most state regulations. All local clean air agencies have their own regulations that may be more restrictive than those of Ecology, but not less.

Ecology regulates businesses with air emissions that are located in certain areas:

- Hanford Nuclear Reservation
- **Central Region:** Chelan, Douglas, Kittitas, Klickitat, and Okanogan Counties
- **Eastern Region:** Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Stevens, Walla Walla, Whitman Counties
- **Northwest Region:** San Juan County

Ecology also regulates specific types of businesses, such as:

- Kraft pulp and paper mills
- Primary aluminum mills
- Large industrial or commercial sources subject to the federal PSD program
- Emitters of specific toxic air emissions at rates higher than levels specified by rule.

Businesses that generate small and moderate amounts of air pollution must participate in the air quality source registration program. The registration program is necessary to ensure that sources of air pollution operate in a way that minimizes emissions to comply with the Clean Air Act and protect human health.

The registration information helps Ecology to:

- Maintain a current and accurate record of air pollution sources in Washington.
- Provide businesses with technical assistance on how to comply with Clean Air Act requirements.
- Verify that businesses are complying with air pollution control requirements.
- Evaluate the effectiveness of air pollution control strategies.
- Gather and verify emissions data.

Businesses generally report emissions either:

- Yearly in the case of annual registration program sources.
- Once every three years for periodic registration program sources.
- Once every six years for exempt registration program sources.

1.2 Regulatory baseline

In most cases, the regulatory baseline for the Small Business Economic Impact Statement (SBEIS), just as for the Cost-Benefit Analysis is the existing rule. Where there is no existing rule, federal and local regulations are the baseline. In the case of the proposed amendments to the Air Quality Fees rule, the existing rule comprises the baseline. The regulatory baseline is the way air quality permit fees would be assigned if the proposed rule is not adopted – that is, based on existing laws and rules. The baseline does not include guidance and practices commonly used in existing permit fee determination and behavior if they are not required by a law, rule, permit, et cetera.

1.3 Changes under the proposed rule

Ecology analyzed the impacts of the following changes proposed to the Air Quality Fees rule.

- Increase general registration program fees for businesses that release small amounts of emissions and report those emissions every three years. These are periodic registration program sources.
- Re-establish air quality registration fees for gasoline dispensing facilities (mainly gas stations).
- Insert the 2012 fee rates used to calculate the annual registration fee and remove the existing process in the rule used to calculate these fees.
- Provide a method for making future fee increases.

- Address “housekeeping” changes necessary to improve the understanding and usability of the rule.

For more information about these changes, see the associated Cost-Benefit and Least Burdensome Alternatives Analysis for the proposed rule amendments (Ecology publication #12-02-011).

Chapter 2 Analysis of Compliance Costs for Washington Businesses

Ecology estimated the expected costs associated with the proposed amendments to the Air Quality Fee rule, as compared to the baseline as described in Section 1.2. In this rulemaking, Ecology is updating Chapter 173-455 WAC (Air Quality Fee Regulation). This rule action covers fees associated with periodic and annual sources.

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Probable benefits include:

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Probable quantified costs include:

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Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor’s Executive Order 10-06.

For periodic sources as well as gasoline dispensing facilities, the proposed fee increases result in roughly 250 times the impact on small businesses as opposed to large businesses on a per-employee basis. This means Ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rulemaking intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes text providing hardship and economic considerations for small businesses in altering their compliance costs.

Based on Washington State Office of Financial Management’s Input-Output model of the state economy, Ecology calculated that the proposed rule may result in three to four jobs being lost in the economy permanently over the next 20 years.

2.1 Quantification of costs and ratios

Ecology calculated the annual costs estimated to come from compliance with the proposed rule amendments. In this section, Ecology summarizes compliance cost calculations (due to space constraints in this document, the full cost and benefit analyses are presented in the associated Cost-Benefit Analysis, Ecology publication #12-02-011).

Ecology also discusses general qualities of businesses and compliance costs, as an additional illustration of the distribution of compliance costs across different business sizes.

Proposed yearly source registration fees for periodic sources are based on the amount of annual emissions of various contaminants. However, there is strong correlation between business size and emissions. Table 1 summarizes this correlation (for example, 81% of small businesses are small emitters, 10% are medium emitters and 9% are large emitters).

Table 1: Firm size by number of employees and periodic category

	Periodic Category		
	Small	Medium	Large
Proposed Yearly Fee	\$450	\$700	\$1,000
Small Businesses (less than 50 employees)	81%	10%	9%
Large Businesses (largest 10% of businesses)	55%	34%	11%

Currently, fees are fixed-rate (that is they do not depend on emissions) at \$400 per year. Using Table 1, the average annual fee based on the proposed rule amendment is estimated to be \$525.11 for small businesses and \$593.42 for large businesses. The cost attributable to the proposed rule amendments would be the difference between the current fee and the estimated fee, or \$125.11 for small businesses and \$193.42 for large businesses.

For gasoline dispensing facilities, proposed fees are based on the number of tanks. The average number of tanks per facility is 2, for an average fee of \$260. Currently, the fee is \$100 per facility. Therefore, the cost attributable to the proposed rule amendments would be the difference between the current fee and the estimated fee, or \$160 per facility.

Chapter 3: Cost per Employee

323 businesses that are currently periodic registration sources and 416 gasoline dispensing facilities within Ecology's jurisdiction would be impacted by this rule amendment.

Periodic sources

Of the periodic sources, nearly 80% are small businesses with less than 50 employees, averaging roughly 12 employees each.

In accordance with Small Business Economic Impact Statement (SBEIS) requirements in the Regulatory Fairness Act, Ecology identified the largest ten percent of businesses that are impacted by the proposed rule amendments. The largest ten percent of affected businesses average 4,446 employees each.

Ecology is required to compare the costs per employee for small businesses (those employing fewer than 50 people) with the largest 10 percent of all businesses complying. In comparing the per-employee costs of compliance with the proposed rule amendments, Ecology found that the largest businesses experience the lowest per-employee costs, at roughly \$0.04 per employee.

The average number of employees for businesses with less than 50 employees is equal to approximately 12 employees. The smallest businesses experience greater per-employee costs (relative to the top 10% of businesses), equal to \$10.43 per employee.

As a result, Ecology believes the proposed rule imposes disproportionate costs on small businesses. Ecology must then include, in the proposed rule, elements mitigating costs to small businesses where legal and feasible. These are discussed in Chapter 4 Actions Taken to Reduce the Impact of the Rule on Small Business.

Gasoline Dispensing Facilities

Nearly all of the gasoline dispensing facilities have less than 50 employees. There is no correlation between the number of tanks and the number of employees. Therefore, because the proposed fee increase averages \$160 per facility, it is disproportional.

Chapter 4 Actions Taken to Reduce the Impact of the Rule on Small Business

Ecology took a number of actions to reduce the disproportionate impacts on small business.

Registration program

- While the proposed periodic source fee is a three-tiered fee structure based on the amount each businesses emits, as opposed to the size of the business, the strong correlation between emission level and business size acts to help mitigate the disproportionate impact on small businesses. This is because smaller business tends to have lower emissions and therefore they fall into the small source fee category.
- To reduce the impact of the fee increase, a payment plan option is included in the rule. This allows a business to spread payments over several months.

- The small business extreme hardship fee reduction is retained from the existing rule. A small business may reduce their fee in half if their net profit is \$12,000 or less.
- Routine compliance inspections of exempt sources (the smallest sources based on emissions) were discontinued. Ecology decided there was minimal value in inspecting this group on a routine basis. This saves the business the lost work time spent meeting with an inspector once every six years.

Gasoline distribution

- Ecology shifted the implementation of the inspection program from the Air Quality Program to existing Underground Storage Tank inspectors, almost halving the fee.
- Contracting with the Department of Revenue to collect the fee as part of the licensing renewal process reduces the fee.
- Fee are phased in beginning six months after the rule is adopted and will be collected on the renewal date of the owner's business license. This saves the business from being billed twice in one year.

Chapter 5 Involvement of Small Business in the Development of the Proposed Rule Amendments

Ecology involved small business and local governments (as well as large businesses and other interested parties) in the proposed rule.

Small business and local governments in most of central and eastern Washington and San Juan County are the stakeholders for this rule making. The stakeholders for this process were allowed to self-select to participate. We sent a postcard to all affected businesses in advance of each of the two meetings notifying them of our intent to increase or re-establish fees and inviting them to attend. To reduce barriers to participation, a conference line was available for each meeting. The registration meetings were held in Moses Lake. The gas station meetings were held as video conferences with locations at the Ecology regional offices in Lacey, Spokane and Yakima.

- For the first meeting about the registration program, 10 business representatives that included several small businesses participated in person at the Moses Lake location. Another eight participated via the telephone. Everyone was encouraged to submit their comments via email on the fee options discussed at the meeting, both Ecology's and those suggested by participants. Fewer small businesses participated in the second meeting although that did not reduce the value of the comments.
- For the first gas station meeting, two staff from one gas station attended in person at the Spokane office and five gasoline distributors participated by telephone. Several small business representatives participated, along with two representatives from trade associations that articulated small business owner concerns. Two stakeholders participated in person and six participated via the telephone in the second meeting. Several small businesses participated, along with representatives from Western Oil Marketers Association.

Chapter 6 NAICS Codes of Impacted Industries

Table 2 lists North American Industry Classification System (NAICS) codes for industries Ecology expects to be impacted by the proposed rule amendments. We derived these codes from our data set of currently registered sources.

Table 2: NAICS Codes of Affected Businesses

111339	238210	326199	334511	424480	486110	611310
111998	238220	327310	334515	424510	488210	622110
112112	238910	327320	336360	424520	493190	711190
115114	238990	327390	336413	424690	493190	811111
115210	311119	327991	336612	424720	511210	811121
212312	311411	331312	337110	424910	517410	811420
212321	311412	331513	339112	425120	518210	811490
212322	311611	331524	423120	441110	541511	812210
212399	311999	332312	423310	443112	541890	812220
221122	321912	332323	423320	444190	541940	812320
236115	321920	332813	423320	444220	561110	822212
236118	322121	333312	423820	445110	561910	921120
237310	325188	333319	423830	453998	561920	921190
238110	325998	333414	423990	484220	562212	922140

Chapter 7 Impacts on Jobs

Ecology used the Washington State Office of Financial Management's Washington Input-Output Model² to estimate the impact of the proposed fee increases on employment. The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output. To estimate job impacts, Ecology used the distribution of businesses in each impacted industry.

The model estimates between three and four jobs permanently lost in the state, over the next 20 years. This result does not account for where fee payments are re-spent by government, as it would on inter-industry transfer payments.

² Please see the Washington State Office of Financial Management's site for more information on the Input-Output model: <http://www.ofm.wa.gov/economy/io/2002/default.asp>.